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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.7737 OF 2006

The Secretary
Maharashtra Education Society & ors. ... Petitioners

V/s.

Dr.Sathe Pratima Anant ... Respondent

Mr.B.P. Apte with Anjali Helekar for Petitioners
Mr.A.V. Anturkar with S.B. Deshmukh for Respondent

CORAM: **SMT.NISHITA MHATRE, J.**

DATED: **JULY 26, 2007**

P.C.:

. The petition challenges the order of the School Tribunal in Miscellaneous Application No.23 of 2004 and in Miscellaneous Application No.28 of 2005.

2. The School Tribunal in Appeal No.78 of 1992 had set aside the impugned order of 11.6.1992 terminating the services of the Respondent. The Tribunal had directed that she be reinstated in service with all the consequential benefits and backwages. Accordingly, the Petitioner reinstated her but did not pay the backwages. It appears that the respondent employee was terminated from service again by the management as a result of which she preferred Appeal No.124 of 1996. This appeal was decided by the Tribunal by the order of 28.10.1999. The Tribunal directed reinstatement w.e.f. 15.10.1996

with full backwages. The management had challenged this order in the High Court before the learned Single Judge when the petition was dismissed. The Letters Patent Appeal filed by the management met with the same fate. The SLP preferred by the management was also dismissed. Thus, the order of the Tribunal dated 28.10.1999 directing reinstatement with full backwages has become final. Respondent No.1 preferred an application under section 13 of the MEPS Act claiming backwages. On 9.8.2006, the Tribunal in Miscellaneous Application No.23 of 2004 directed the Petitioners to take steps to implement the order by paying backwages, inclusive of allowances and other increments, within a month from that date. Another Miscellaneous Application was also filed by the respondent being Miscellaneous Application No.28 of 2005. This application was decided on 5.9.2006. The Tribunal directed the School to calculate the salary in accordance with the norms laid down by the State of Maharashtra, Department of Education, from the date when she was entitled to be reinstated. The review application filed by the petitioner was dismissed.

3. The petitioner takes exception to these orders passed on a miscellaneous application by contending that the Tribunal while acting u/s 13 of the Act has enlarged the scope of the provisions u/s 13. It is submitted by the learned Counsel appearing for the petitioners that

section 13 is a punishing section and the Tribunal could not have directed either parties to file calculations or directed the petitioners to pay wages at a particular rate. According to the learned Counsel, the backwages which were payable according to the institution have already been paid to the respondent and therefore nothing remains to be paid to her. He submits by relying on the judgment of this Court in Writ Petition No.3931 of 2006 dated 21.8.2006 that an executing Court cannot decide what should be the rates of wages to be paid as the Tribunal acting u/s 13 is an executing Court.

4. The learned Counsel appearing for the respondent brings to my notice that the two Miscellaneous Application Nos.23 of 2004 and 26 of 2005 were filed because the petitioners had failed to comply with the orders of the Tribunal. He submits that section 13 although a punishing section, when a Tribunal exercises powers u/s 13, it is always open for the Tribunal to permit the management of the School to comply with the order before taking the drastic action of punishing the school. He submits that the Tribunal has committed no error while directing the parties to calculate the amounts payable to the respondent. Apart from this, he points out on instructions from the Constituted Attorney of the respondent, who is present in Court, that no

backwages have been paid at all to the respondent, either in compliance with the earlier order of 13.10.1995 or the order of 28.10.1999.

5. The submission made by the learned Counsel for the petitioner cannot be accepted. Section 13 of the MEPS Act reads thus:

> "13. Penalty to Management for failure to comply with Tribunal's directions: (1) If the Management fails, without any reasonable excuse to comply with any direction issued by the Tribunal under section 11 or any order issued by the Director under clause (a) of sub-section (1) or sub-section (4) of section 4A within the period specified in such direction, or as the case may be, under sub-section (5) of section 4A or within such further period as may be allowed by the Tribunal or Director, as the case may be, the Management shall, on conviction, be punished,
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> (a) for the first offence, with imprisonment for a term which may extend to fifteen days or with fine which may extend to fifty thousand rupees or with both:
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> Provided that, in the absence of special and adequate reasons to the contrary to be mentioned in the judgment of the Court, the fine shall not be less than ten thousand rupees and
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> (b) for the second and subsequent offences, with imprisonment for a term which may extend to fifteen days or with fine which may extend to seventy five thousand rupees, or with both.
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> Provided that, in the absence of special and adequate reasons to the contrary to be mentioned in the judgment of the Court, the fine shall not be less than twenty thousand rupees.
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> (2)(a) Where the Management committing an offence under this section is a society, every person, who at the time the offence was

committed, was in charge of, and was responsible to the society, shall be deemed to be guilty of the offence and shall be liable to be proceeded against and punished accordingly:

Provided that, nothing contained in this sub-section shall render any person liable to the punishment, if he proves that the offence was committed without his knowledge or that he had exercised all due diligence to prevent the commission of the offence.

(B) Notwithstanding anything contained in clause (a) where the offence has been committed by a society and it is proved that the offence has been committed with the consent or connivance of, or is attributable to any neglect on the part of, any president, chairman, secretary, member, Head or manager or other officer or servant of the society, such president, chairman, secretary, member, Head or manager or other officer or servant concerned shall be deemed to be guilty of the offence and shall be liable to be proceeded against and punished accordingly.

6. It is obvious from this section that the Tribunal's powers are not limited only to punish an errant management. The Tribunal can always permit such a management to rectify its conduct by complying with the orders of the Court, before punishing the management. While assessing whether the management has complied with the orders of the Court, it would be necessary for the Tribunal to ascertain whether backwages have been paid as directed by the Tribunal. The Tribunal need not take the word of the management as gospel truth that backwages have been paid. The Tribunal would have to determine for itself whether full backwages which were payable in accordance with law have

been paid. It can do so only by ascertaining from both the parties the amounts which are payable.

7. The submission that the review application ought not to be rejected is unsustainable as there is no specific provision for review in the Act. The Tribunal is a creature of the statute and, therefore, draws its jurisdiction and power only from the statute. It cannot overstep the statute. Section 10 makes the provisions of the Civil Procedure Code applicable while considering the appeals. The provisions of the CPC are not applicable to proceedings u/s 13.

8. The judgment relied on by the learned Counsel for the petitioner has no relevance as the powers of the Tribunal u/s 13 are different from those exercised by the Joint Civil Judge, Senior Division acting as an executing Court. This Court was not considering whether u/s 13 the powers of the Tribunal are limited and whether it exercises powers only as an executing Court.

9. In this view of the matter, the Petition is rejected. The amount deposited by the Petitioner in this Court may be withdrawn by Respondent No.1.

10. The learned Counsel for the Petitioner submits that this order be stayed. Stay refused.